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Rules of the Supreme Court of the United States, 16 (A) and (b) 1

BRIEF BY RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Pursuant to Rule 16 (A) and (B) of the Rules of the Supreme Court of the United States, Respondent requests that this Court dismiss the Petition for Writ of Certiorari for the reasons that this Court lacks jurisdiction to hear an appeal based on the jurisdictional grounds asserted in the Petition.

OPINIONS BELOW

The Opinions of the Lower Court and the Opinion of the Supreme Court of Pennsylvania are printed in Petitioner's Brief. In addition, a Petition for Reargument was presented to the Supreme Court of Pennsylvania. The Petition was denied by that Court on the 13th day of August, 1970. A copy of the Petition for Reargument and the Order of August 13, 1970 are set forth in Respondent's Appendices "A" and "B".

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3). This Court lacks jurisdiction under this Section to review a State Court action quashing an appeal to the State Court, for failure of Petitioner to file the appeal to the State Court within the statutory period prescribed for the appeal, where no Federal Questions are present in the case.

QUESTIONS PRESENTED FOR REVIEW

1. Where there is no Federal Constitutional Question involved in the litigation before the State Court and the applicable appeal statute grants to Petitioner a forty-five

(45) day period in which to appeal from the decision of the Lower Court to the Pennsylvania Supreme Court, does the jurisdiction of the Supreme Court of the United States attach on appeal from the Judgment of the Pennsylvania Supreme Court quashing Petitioner's appeal, on the sole ground that the appeal was filed after the expiration of the statutory period?

2. Where the Supreme Court of Pennsylvania was fully informed by the Petitioner of the reasons for Petitioner's "late" appeal in the Petition for Reargument, was Petitioner deprived of property without due process of law or denied equal protection of the law by the denial of the Petition for Reargument and the quashing of the appeal?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions involved are contained in the Fourteenth Amendment to the United States Constitution. The Pennsylvania statutory provision involved is the Eminent Domain Code, Act of June 22, 1964, P.L. 84, Art. V., Section 523; 26 Purdon's Pa. Stat. Ann. 1-523 providing for appeal in condemnation cases to the Supreme Court of Pennsylvania.

STATEMENT OF THE CASE

This case arises out of a condemnation proceeding instituted by Respondent for condemnation of Petitioner's sub-standard building in an area of the City of Erie which was part of an Urban Redevelopment Project. Petitioner contested Respondent's right to condemn the property. Hearings were held in the Court of Common Pleas of Erie County, Pennsylvania and evidence was taken, not only in support of Respondent's right to condemn the property, but also in support of Petitioner's position that the condemnation was illegal and improper. On September 11, 1969, the Court of Common Pleas held that Petitioner's

property was, in fact, sub-standard and that Respondent had the right to condemn it as part of the Urban Redevelopment Project involving the area in which this property was located. This Order was the final Order of the Court of Common Pleas from which Petitioner filed an untimely appeal to the Supreme Court of Pennsylvania.

The pertinent statute for appeal of the Order of the Court of Common Pleas is Section 523 of the Pennsylvania Eminent Domain Code, 26 Purdon's Pa. Stat. Ann. 1-523, which states as follows:

> "Either party may appeal to the Supreme or Superior Court, as the case may be, from any final Order or Judgment of the Court of Common Pleas within forty-five (45) days from the entry thereof."

Petitioner could have filed his appeal with the Prothonotary of the Pennsylvania Supreme Court at any time between September 12, 1969 and October 27, 1969. The Petitioner did not attempt to file his appeal until after the denial of his Petition for Rehearing in the Lower Court on October 23, 1969. The filing of the Petition for Rehearing did not prevent the filing of the appeal to the Supreme Court of Pennsylvania. Petitioner could have requested a stay of proceedings from the Lower Court during the pendency of the Petition for Rehearing before that Court, but Petitioner failed to file an appeal and failed to request a stay of proceedings.

Petitioner admits the appeal was not filed with the Prothonotary of the Supreme Court until October 28, 1969, after the statutory period for the filing of the appeal had expired.

The Pennsylvania Supreme Court quashed the appeal because Petitioner failed to file its appeal within the statutory period. Petitioner's Petition for Reargument to the Pennsylvania Supreme Court contained all the reasons which Petitioner asserted justified the "late" filing of the appeal. The Petition for Reargument was supported by affidavits. The Pennsylvania Supreme Court, which was

then fully informed by Petitioner, considered the matters raised by Petitioner and denied the Petition for Reargument, without opinion, on August 13, 1970.

At the hearings and in argument and Briefs before the Lower Court, the Petitioner failed to present any Federal Constitutional Questions. Nor did the Lower Court in its Opinion mention, discuss, or pass on any Federal Constitutional Question.

On appeal to the Supreme Court of Pennsylvania, no Federal Constitutional Questions were raised by Petitioner. In fact, Petitioner's Brief filed with that Court stated the questions to be as follows:

STATEMENT OF QUESTIONS INVOLVED

"(1) Where a specific reuse purpose is adopted by a redevelopment authority as the basis for the taking of one of two similar properties, is the taking arbitrary if such reuse purpose has no reasonable probability of fulfillment?

(Answered in the negative by the Court below.)

(2) Did the lower court abuse its discretion in refusing to grant a rehearing as to events which transpired after the close of testimony but which affect the question of arbitrariness in the condemnation of Owner's property?

(Not answered in the Court below.)

(3) May this court exercise its broad power of review of a final order of the court below which was not reviewed by a court en banc and where the finding of fact, inferences and conclusions of law as they pertain to a finding of blight are not supported by adequate evidence?

(Not answered by the Court below.")

The Opinion of the Pennsylvania Supreme Court does not mention, discuss or pass upon any Federal Constitutional Questions.

Federal Constitutional Questions are presented by Petitioner to this Court for the first time and are based *solely* on the action of the Supreme Court of Pennsylvania in quashing Petitioner's appeal on the ground that it was not filed within the requisite statutory period.

REASONS FOR DENIAL OF WRIT

This Court does not have jurisdiction to consider an appeal on the grounds raised in the Petition for Writ of Certiorari. Petitioner raised no Federal Constitutional issues with respect to the validity of the Pennsylvania Eminent Domain Code or of Respondent's activities thereunder. Petitioner's sole ground for appeal to this Court to review the decision of the Pennsylvania Supreme Court appears to be based on Petitioner's contention that this Court is required to review the statutory and procedural requirements requisite to the filing of an appeal in the State Court, when, admittedly, Petitioner failed to comply with these requirements. It is apparent from a review of the Petition for Writ of Certiorari that no Federal Constitutional Question was ever raised by Petitioner in the State Court proceedings.

This Court from its inception has adhered to the principle that it will not review judgments of State Courts which rest on adequate, independent, non-Federal, State grounds. This doctrine is clearly enunciated in the case of *Herb. v. Pittcairn*, 65 S. Ct. 459 (1945); 324 U. S. 117; 89 L. Ed. 789 where on 65 S. Ct. 463 (324 U. S. 125) this Court states:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. Murdock v. Memphis, 20 Wall. 590, 636, 22 L. Ed. 429; Berea College v. Kentucky, 211 U. S.

45, 53, 29 S. Ct. 33, 34, 53 L. Ed. 81; Enterprise Irrigation District v. Farmers' Mutual Canal Co. 243 U. S. 157, 164, 37 S. Ct. 318, 320, 61 L. Ed. 644; Fox Film Corp. v. Muller, 296 U. S. 207, 56 S. Ct. 183, 80 L. Ed. 158. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights."

See also *Milk Drivers Union of Chicago, Local 753 et al. v. Meadowbrook Dairies, Inc.* (1941) 61 S. Ct. 552, 312 U. S. 287, 85 L. Ed. 836; *U. S. v. Pink* (1942) 62 S. Ct. 552, 315 U. S. 203; 86 L. Ed. 796; *Dixon v. Duffy* (1951) 72 S. Ct. 10, 342 U. S. 33, 96 L. Ed. 46; *Hammerstein v. Superior Court of California* (1951) 71 S. Ct. 521, 340 U. S. 622, 95 L. Ed. 586; *Henry v. State of Mississippi* (1965) 85 S. Ct. 564, 379 U. S. 443, 13 L. Ed. 2d 408.

In *Williamson v. Hopewell Redevelopment and Housing Authority* (1963) 83 S. Ct. 315, 371 U. S. 234, 9 L. Ed. 2d. 495, the Court dismissed for lack of a substantial Federal Question, a property owner's objections to the procedural aspects of the Virginia Eminent Domain Code.

Petitioner herein presented no Federal or State Constitutional issue with respect to the reasonableness of the requirement of the Pennsylvania Eminent Domain Code providing for a forty-five (45) day appeal period. Petitioner's sole ground for review is the failure of the Supreme Court of Pennsylvania to allow the appeal from the Court of Common Pleas of Erie County, Pennsylvania after the statutory period for filing the appeal had expired.

The decision of the Pennsylvania Supreme Court on Petitioner's appeal to that Court was in conformity with all of its past decisions regarding the failure of a party to conform with a statutory appeal period. The Supreme Court of Pennsylvania has held on numerous occasions that "it is without the power to enlarge or extend the time

provided by statute for the taking of appeal." *Commonwealth v. Bey*, 437 Pa. 134, 262 A. 2d 144 (1970); *Commonwealth v. Simon*, 413 Pa. 609, 198 A. 2d 583 (1964) and *Commonwealth v. Mackley*, 380 Pa. 70, 110 A. 2d 172 (1955).

There are some extraordinary situations in which the Supreme Court of Pennsylvania has allowed an appeal after the statutory period for the filing of the appeal had apparently expired. Only where fraud is involved, or there has been a breakdown in the Court's operation through a default of the Court's officers, where the party filing the appeal has been misled by such a default, will an appeal be permitted after the expiration of the statutory period. The rationale of these decisions is that the statutory period for the filing of the appeal would not begin to run until the date on which Appellant or his counsel received from the Court the notice of the order or judgment from which the appeal would lie. The Court cannot extend the statutory period itself.

In *Nixon v. Nixon*, 329 Pa. 256, 198 A. 154, (1938), upon which Petitioner relies heavily, the Appellant did not appeal to the Pennsylvania Supreme Court within the forty-five (45) day statutory period because the Clerk of the Superior Court failed to notify the Appellant of the decision of that Court. In permitting the appeal under these circumstances, the Supreme Court of Pennsylvania had the following to say on page 259 of its Opinion:

> "An Appellant is barred by the lapse of more than forty-five days between the judgment of the Superior Court and the filing of the petition for an allowance of appeal otherwise there would be no finality to judicial action. See Platt-Barber Co. v. Groves, supra; Harris v. Mercur (No. 1), 202 Pa. 313; Wise v. Cambridge Springs Borough, 262 Pa. 139; Jordan v. Eisele, 273 Pa. 95; Miller & Sons' Co. v. Mt. Lebanon Township (No. 2), 309 Pa. 221; Marcus v. Cohen 94 Pa. Super. Ct. 383. But, as this Court has indicated, the legislative purpose is not to foreclose a party who

satisfactorily explains his delay. However, the occasion must be *extraordinary* and must involve fraud or some breakdown in the court's operation through a default of its officers, whereby the party has been injured. There can be no extension of time as a matter of indulgence; Schrenkeisen v. Kishbaugh, 162 Pa. 45, 48. Such excuses as a client's illness (Marcus v. Cohen, supra), *or neglect of an attorney* (Ward v. Letzkus, 152 Pa. 318: Wise v. Cambridge Springs Borough, supra at p. 144) are insufficient. Fraud, on the other hand (Ziegler's Petition, 207 Pa. 131; York County v. Thompson, 212 Pa. 561) or its equivalent, "the wrongful or negligent act of a court official" (Singer v. Del. L. & W. R. R. Co., 254 Pa. 502, 505) may be a proper reason for holding that, as to the injured person, the statutory period does not run and that the wrong may be corrected by means of a petition filed nunc pro tunc within a reasonable time. As was stated in Horn v. Lehigh Valley R. R. Co., 274 Pa. 42, 44, in reference to a statute limiting claims for workmen's compensation: "While the governing sections are mandatory . . . we have held, where a party has been prevented from doing an act through fraud or circumstances that amount to fraud, the court might extend the time within which to do the act: . . ." And in Schwartz Bros. v. Adams Express Co., 75 Pa. Super. Ct. 402 403, it was said: "Where a party has been prevented from appealing by fraud or by the ignorance or negligent act of a court official, it has been held that the court has power to extend the time for taking an appeal." (Emphasis supplied)

In *Ward v. Letzkus*, 153 Pa. 318, 25 A. 778 (1893) and *Wise v. Cambridge Springs Borough*, 262 Pa. 139, 104 A. 863 (1918), cited in Nixon, counsel for the Appellant failed to file the appeal within the statutory period and in both cases, the Supreme Court of Pennsylvania refused to permit the late appeal.

In the very recent case of *Commonwealth v. Bey*, 437 Pa. 134 198 A. 2d 134 (1970), the District Attorney appealed a decision of the Lower Court after the expiration of the statutory appeal period. In quashing the appeal, the Court stated on page 137 of its Opinion:

> "We are without the power to enlarge or extend the time provided by statute for taking an appeal or to grant leave to file an appeal nunc pro tunc. See: Commonwealth v. Simon, 413 Pa. 609, 610-11, 198 A. 2d 583 (1964); Commonwealth v. Mackley 380 Pa. 70, 73, 110 A. 2d 172 (1955). See also: 4 Am. Jr. 2nd Appeal and Error §§292, 293 (1962); 9 Standard Pennsylvania Practice (Rev'd) §25 (1962). Neither the parties, by agreement, nor the Court, by acquiescense, can extend its jurisdiction."

II. In the Petition for Reargument, Petitioner discusses all of the reasons why the appeal was filed after the statutory period had expired and the circumstances under which the appeal was filed. After consideration of the Petition for Reargument, the Supreme Court of Pennsylvania, on August 13, 1970, affirmed its decision, quashing the appeal. Petitioner's contention that the Supreme Court of Pennsylvania failed to consider the circumstances under which the appeal was filed is without merit.

CONCLUSION

For the foregoing reasons, Respondent requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

QUINN, PLATE, GENT, BUSEK & LEEMHUIS

JOHN G. GENT, Esquire
JOHN M. QUINN, Esquire

APPENDIX "A"

IN THE
SUPREME COURT OF PENNSYLVANIA
Western District

PETITION FOR REARGUMENT AND/OR LEAVE TO APPEAL OCTOBER 27, 1969, NUNC PRO TUNC

To the Honorable, the Justices of said Court.

The petition of Achilles C. Pulakos, appellant, in the above case, by his attorneys, Knox, Graham, Pearson & McLaughlin, respectfully prays your Honorable Court to grant him a rehearing and/or leave to appeal nunc pro tunc for the following reasons:

FACTS

1. On July 2, 1970, by Opinion and Order of this Court, Appellant's appeal was quashed because it was untimely filed. A copy of the Opinion is attached hereto as Exhibit A.

2. Appellant had 45 days within which to appeal the adverse decision of the lower court on his preliminary objections to a condemnation proceeding. Eminent Domain Code, Act of June 22, 1964, Spec. Sess., P.L. 84, Art. V, Sec. 523, 26 P.S. Sec. 1 - 523 (Supp. 1970).

3. The Order of the lower court dismissing preliminary objections to the condemnation was entered September 11, 1969. Consequently, Appellant's time for appeal expired October 26, 1969, but since that day was a Sunday, the time was extended to October 27, 1969, by virtue of the Statutory Construction Act, act of May 28, 1937, P.L. 1019,

Art. III, Sec. 38, as amended, August 11, 1959, P.L. 691, Sec. 1, 46 P.S., Sec. 538.

4. The records of the Prothonotary for the Western District of the Supreme Court indicate that the appeal was docketed October 28, 1969, one day after the appeal time had elapsed.

5. At page 2 of the Opinion by Mr. Justice Eagen, this Court recites, "that the signature on the appeal form was verified by affidavit dated October 23, 1969, and sometime thereafter (the record does not disclose the date), the appeal form was mailed in Erie, addressed to the Prothonotary's Office for the Western District of the Supreme Court in Pittsburgh. But it was not received in the Prothonotary's office until October 28th."

6. The appeal form was in fact mailed from Erie to the Prothonotary at Pittsburgh on October 23, 1969, the same date as that set forth in the affidavit to the appeal form.

7. On October 23, 1969, the lower court denied Appellant's petition for a rehearing. Mr. Edwin L. R. McKean, attorney for Appellant, immediately and on that same day dictated the appeal form and transmittal letter to Mrs. Gertrude Miodus, Secretary. Mrs. Miodus prepared the appeal form and transmittal letter and after the signature of Appellant was obtained, attached the necessary postage and placed the letter, marked "Certified Mail," into the day's outgoing mail. Affidavits of Mr. McKean and Mrs. Miodus are attached hereto as Exhibits B and C respectively. Copies of the appeal form, transmittal letter and certified mail file receipt are attached hereto as Exhibits D, E and F respectively.

8. Appellant is informed by Postal authorities at Erie that the letter would have left Erie on Star Route truck service to Pittsburgh at 9:00 P.M. the evening of the 23rd of October and arrived in Pittsburgh at 1:45 A.M. the morning of the 24th of October. The truck was on time. Postal authorities also informed Appellant that

there are four truck shipments and one air taxi shipment to Pittsburgh daily.

9. Postal authorities at Pittsburgh inform Appellant that under normal circumstances a certified letter arriving in Pittsburgh at 1:45 A.M. would be delivered the same day (October 24th) and no later than Monday, October 27th.

10. In fact, the letter was not delivered until Tuesday, October 28, 1969, one day after the time for appeal had elapsed. The return receipt is attached hereto as Exhibit G. Please note that the same code number, 33751, is printed on both the return receipt, Exhibit G, and on the file mailing receipt retained by Appellant's counsel, Exhibit F.

11. Postal authorities and Appellant have no explanation for the delay in delivery. United States Mail Carrier, No. 1960, Mr. James Williamson, who regularly delivers mail to the Prothonotary, and who delivered Appellant's certified letter on this occasion, has informed Appellant's counsel that on infrequent occasions a piece of certified mail may be mis-sorted into third and fourth class mail and remain undetected for several days. The Post Office would have no record of such an occurrence.

12. Normal mail delivery between Erie and Pittsburgh is overnight. This is shown by reference to Exhibit H, a letter from the Prothonotary to Appellant's counsel dated October 28, 1969 containing the writ of certiorari and requesting the return of a praecipe for appearance, and Exhibit I, the response letter of Appellant's counsel returning the praecipe under date of October 29, 1969, and the receipt of the Prothonotary for Erie County evidencing filing the writ of certiorari on October 29, 1969, Exhibit J.

ARGUMENT

Erie, Pennsylvania is approximately 130 miles from the office of the Prothonotary at Pittsburgh and it is approximately a three hour drive one way. The only way Appellant's counsel could have guaranteed the arrival

of the appeal form would have been to drive or fly to Pittsburgh and personally enter the appeal with the Prothonotary. Such a requirement would be burdensome and expensive for the client. Attorneys in outlying areas to Philadelphia, Harrisburg and Pittsburgh, therefore, must depend upon the mails for the filing of appeal papers.

The Supreme Court of Pennsylvania must have recognized the plight of attorneys and clients in outlying areas with respect to the filing of legal papers when it promulgated the Pennsylvania Rules of Civil Procedure. For example, the Letter of December 1, 1967 from the Chief Justice to all Pennsylvania Judges annexed to Supreme Court Rule 14 recited in part "An out of county attorney may not thereafter be required to appear personally or through local counsel in order to file any papers in the local courts or in any of the aforesaid offices, but may do so by mail. An out of county attorney may be served by mail at his address within the Commonwealth."

Appellant believes that it is reasonable to assume that a certified letter mailed to Pittsburgh from Erie, a distance of 130 miles, will arrive at its ultimate destination within four days where normal service is overnight. Appellant argues that the unanticipated delay in arrival of the appeal form at the Prothonotary's office where the form was mailed well within normal delivery time is a circumstance beyond his control and such an extraordinary circumstance that appeal should be permitted nunc pro tunc. In *Nixon v. Nixon*, 329 Pa. 256 (1938) at page 259 this Court said:

> "An Appellant is barred by the lapse of more than forty-five days between the judgment of the Superior Court and the filing of a petition for an allowance of appeal; otherwise there would be no finality to judicial action . . . but, as this Court has indicated, the legislative purpose is not to foreclose a party who satisfactorily explains his delay."

It is true that *Nixon* involved an oversight on the part of the Prothonotary. Nevertheless, the case does stand

for the proposition that an appellant should not suffer for circumstances over which he has no control. In *Nixon*, an attorney depended upon the "custom" of the Prothonotary in mailing notices even though no rule of court required such mailing. The court stated at pages 261 and 262 of the *Nixon* opinion that:

> "Neither appellant nor his counsel knew, nor had any reason to believe, there had been a mistake in the Prothonotary's Office. Under the circumstances they were entitled to expect this notice. The Harrisburg District is composed of twelve counties, and the opinions on cases arising there are handed down at various places at which the court sits, usually cities other than Harrisburg. Counsel lives in Adams County and it would impose too great a burden to require him to daily inform himself by telephone. Appellant through his attorney, was lulled into security by this practice, and his failure to receive such notice is sufficient reason for us to hold that appellant should be permitted an appeal. To hold otherwise would work a grave injustice."

Appellant believes that to require the personal delivery of papers to the Prothonotary's office, which is the effect of the Court's Opinion in this case, would impose the same intolerable burden on attorneys in outlying areas as in *Nixon* and that to refuse an appellant an appeal would work a similar injustice.

A similar situation involving late mail confronted the Court in *Johnson v. Esso Standard Oil Co.*, 181 Fed. Supp. 431, D. C. 1960. In that case the Court held that delay in the mails of one day over which the party had no control should not bar an action as the result of the Statute of Limitations.

Appellant further argues that to deny an appellant a decision on the merits in this case under the circumstances wherein the delay in the delivery of the appeal form was one day is such an injustice as to deprive Appel-

lant of the equal protection of the laws and is a deprivation of property without due process of law in contravention of the Constitutions of both the Commonwealth of Pennsylvania and the United States of America.

CONCLUSION

Appellant respectfully prays your Honorable Court to enter an appeal October 27, 1969 nunc pro tunc and to grant a rehearing in this case.

Respectfully submitted,

KNOX, GRAHAM,
PEARSON & McLAUGHLIN

By /s/ WILLIAM W. KNOX
/s/ EDWIN L. R. McKEAN

AFFIDAVIT

Commonwealth of Pennsylvania)
) ss.
County of Erie)

I, EDWIN L. R. McKEAN, attorney for Appellant in the case of *The Redevelopment Authority of the City of Erie v. Achilles C. Pulakos*, No. 36 March 1970, make the following affidavit:

I recall dictating to Gertrude Miodus, secretary, on October 23, 1969, the appeal form in this case and the transmittal letter to the Prothonotary of the Supreme Court of Pennsylvania, Western District, at Pittsburgh, Pennsylvania. I recall further that on the same day I secured the affidavit of the Appellant to the appeal form, attached my signature to the transmittal letter and requested Gertrude Miodus to mail the letter and appeal form, certified mail, on the same date.

I recall the circumstances of this transaction for the reason that the dictation and mailing was accomplished on the same day that the lower court dismissed Appellant's petition for rehearing.

/s/ EDWIN L. R. McKEAN

AND NOW, to-wit, this 9th day of July, 1970, in and for said county and state, personally appeared Edwin L. R. McKean, who being satisfactorily known to me, a Notary Public, swears that the above facts are true and correct to the best of his knowledge, information and belief.

/s/ EDWIN L. R. McKEAN

Sworn to and subscribed before me
this 9th day of July, 1970.

/s/ HELENA SETTINO

Helena Settino,
Notary Public, Erie, Erie County.
My Commission Expires Aug. 2, 1971.

AFFIDAVIT

Commonwealth of Pennsylvania)
) ss.
County of Erie)

I, GERTRUDE MIODUS, secretary to the law firm of Knox, Graham, Pearson and McLaughlin, make the following affidavit:

I recall preparing on October 23, 1969, an appeal form to the Supreme Court of Pennsylvania in the case of *The Redevelopment Authority of the City of Erie v. Achilles C. Pulakos*, No. 36 March 1970, a transmittal letter to the Prothonotary of The Supreme Court of Pennsylvania, Western District, at Pittsburgh, Pennsylvania, a certified mail receipt for the file and for delivery. I also recall that on the same date I inserted the documents in the mailing envelope and attached the certified mail receipt and the necessary postage and deposited the envelope into the outgoing mail basket for the day.

I recall the circumstances surrounding this particular mailing because of the urgency of the matter and the fact that I have not prepared an appeal form to the Supreme Court of Pennsylvania on any occasion prior or subsequent to October 23, 1969.

/s/ GERTRUDE MIODUS

AND NOW, to-wit, this 9th day of July, 1970, in and for said county and state, personally appeared Gertrude Miodus, who being satisfactorily known to me, a Notary Public, swears that the above facts are true and correct to the best of her knowledge, information and belief.

/s/ GERTRUDE MIODUS

Sworn to and subscribed before me
this 9th day of July, 1970.
/s/ HELENA SETTINO

Helena Settino,
Notary Public, Erie, Erie County.
My Commission Expires Aug. 2, 1971.

In the Supreme Court of Pennsylvania

WESTERN DISTRICT

IN REM PROCEEDINGS
In re: Premises commonly known as 926 State Street, City Index No. 3005-101, and LPA Parcel No. 31-7, situate in the City of Erie, County of Erie and Commonwealth of Pennsylvania

REDEVELOPMENT AUTHORITY OF THE CITY OF ERIE

- vs -

OWNERS OR PARTIES IN INTEREST ACHILLES C. PULAKOS

COURT OF COMMON PLEAS

County of ERIE

No. 1121 A Term, 19 68

Nature of Case (See Note)

Enter Appeal on behalf of OWNERS OR PARTIES IN INTEREST ACHILLES C. PULAKOS

from the Judgement of the Court of Common Pleas

of the County of Erie at the above number and term.

KNOX, GRAHAM, PEARSON & McLAUGHLIN

To PATRICK N. BOLSINGER,
Prothonotary of the Supreme Court of Pennsylvania,
For the Western District

By _____
Attorneys for Appellant

SEND ALL NOTICES TO
Edwin L. R. McKean Esq.
(Address) 23 West 10th Street
Erie, Pennsylvania 16501

County of Erie ss:

Achilles C. Pulakos being duly sworn, says that the above Appeal is not intended for delay but because Appellant believes he has suffered injustice by the judgement from which he appeals.

Sworn and subscribed before me this 23rd day of October A. D. 1969

_____

_____

18 Appeal

NOTE:—This space is to be filled in only if the case is in one of the following classes:
(1) Felonious Homicide.
(2) Mandamus.
(3) Quo Warranto.
(4) Preliminary injunction.
(5) Decree requiring an account—Appeal pursuant to Act of March 30, 1921, P. L. 60
(6) Question of Jurisdiction—Appeal pursuant to Act of March 5, 1925, P. L. 23.

October 23, 1969

Edwin L. R. McKean

Patrick M. Boisinger
Prothonotary of the Supreme Court
of Pennsylvania
Western District
801 City County Building
Pittsburgh, Pennsylvania 15219

Re: Redevelopment Authority of the City of Erie v. Pulakos
Court of Common Pleas of Erie County, No. 1121 A 1968

Dear Sir:

Enclosed herewith please find Appeal and Affidavit to the Supreme Court of Pennsylvania in the above captioned matter and our check in the amount of $12.00 drawn to your order.

Yours very truly,

KNOX, GRAHAM, PEARSON & McLAUGHLIN

By _____
Edwin L. R. McKean

ELRM:gm

Enclosures

20

Certified Mail Receipt

RECEIPT FOR CERTIFIED MAIL—30¢

No. 331751

SENT TO
Patrick N. Bolsinger, Prothonotary

STREET AND NO.
of the Supreme Ct. of Pa., Western

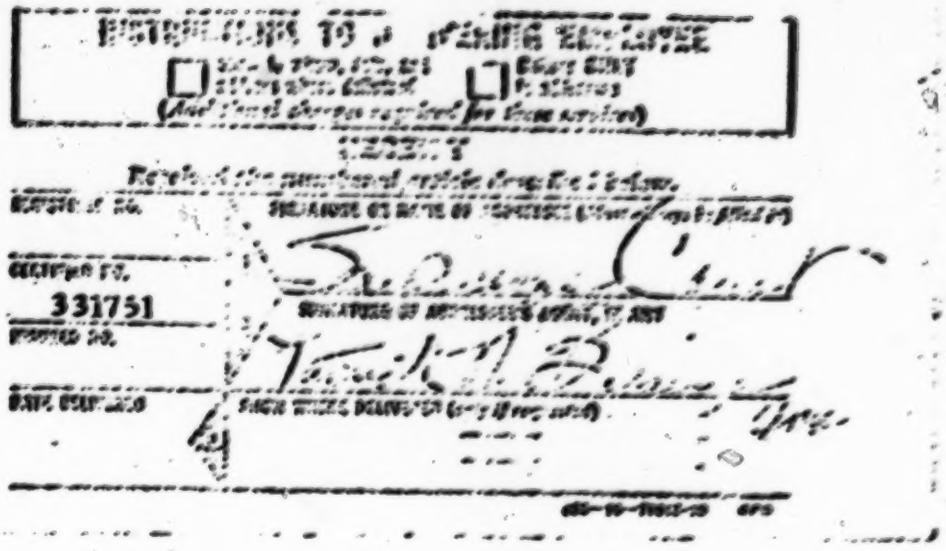
P. O., STATE, AND ZIP CODE
District
801 City County Bldg., Pitts. Pa.

POSTMARK OR DATE
10-23-69

EXTRA SERVICES FOR ADDITIONAL FEES
Return Receipt
Shows to whom and date delivered ☐ 10¢ fee
Shows to whom, date, and where delivered ☐ 25¢ fee
Deliver Addressee Only ☐ 50¢ fee
1521

POD Form 3800 Rev. 1966 NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side)

Certified Mail Signed Receipt



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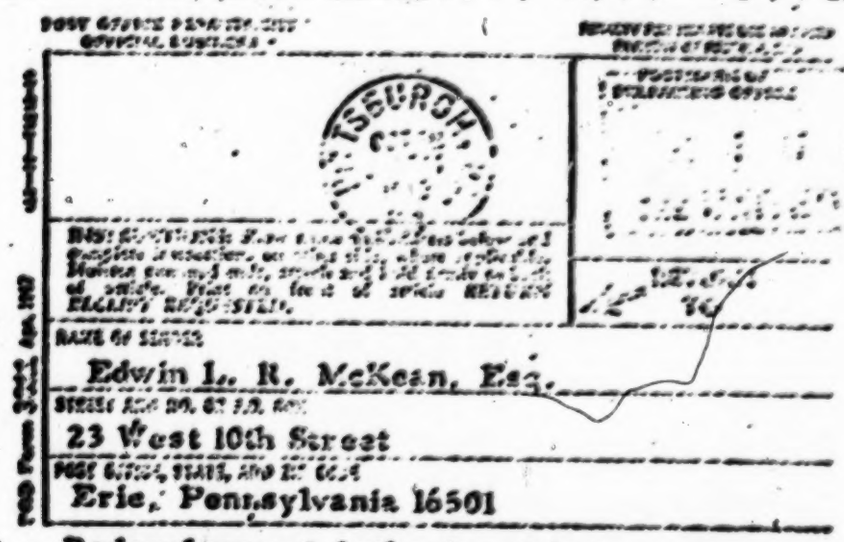

(Redevelopment Authority of Erie v. Pulakos)

The Supreme Court of Pennsylvania
Western District

PATRICK N. BOLSINGER
PROTHONOTARY
HELEN D. STEELE
DEPUTY PROTHONOTARY

PITTSBURGH, PA.
15219

October 28, 1969

Edwin L. R. McKean, Esq.
23 West 10th Street
Erie, Pa. 16501

Re: Redevelopment Authority v. Owners, et al.
No. 36 March Term, 1970

Dear Mr. McKean:

This will acknowledge receipt of your letter of October 23, enclosing appeal and affidavit in the above-entitled matter together with your check for $12.00. I am enclosing a receipt for your check in payment of the filing fee.

The appeal has been entered in the Supreme Court at the above number and term and will be listed for argument at the session commencing in Pittsburgh on March 16, 1970.

I am enclosing herewith writ of certiorari, for filing in the office of the Court of Common Pleas of Erie County. Please advise me what division of the Court is involved. I also enclose form of notice of appeal which should be served on opposing counsel in accordance with the requirements of Rule 63 and filed in the court below. When you are serving this notice, will you also ask opposing counsel to sign the enclosed praecipe for appearance and return it to this office as promptly as possible.

If the Judge of the court below has not filed an opinion, it will be necessary under Rule 63 to serve him with notice of appeal, and if the official transcript of the testimony has not been filed, notice must also be served on the stenographer who took the testimony. Forms for this purpose will be furnished upon request and acceptance of service of these notices should also be filed in the court below.

Very truly yours,

Helen D. Steele

DEPUTY PROTHONOTARY

HS:ad
Enclosures

23

Letter

October 29, 1969

Edwin L. R. McKean

Helen P. Nicely
Deputy Prothonotary
The Supreme Court of Pennsylvania
Western District
Pittsburgh, Pennsylvania 15219

Re: Redevelopment Authority v. Owners, et al
No. 36 March Term, 1970

Dear Madam:

Enclosed herewith please find Appellee's Praecipe for Appearance executed by Mr. John M. Quinn, Esquire, Counsel for Appellee. The Court Term and number for the case below is 1121 A-1968, Civil Division. The Judge of the Court below has filed an Opinion. The official transcript of the testimony has been filed.

Yours very truly,

KNOX, GRAHAM, PEARSON & MCLAUGHLIN

BY _____
Edwin L. R. McKean

ELRM/jmt

Enclosure

Receipt

No.

PROTHONOTARY
ERIE COUNTY

Date 10/29/67

Received of Edwin McKean $20.00

For Certiorari
No. 1121 - G - 67
In Re: Archibald C. Gulotta

Co. Fee 20.00

M. Buzzigoli
Dep. Prothonotary

APPENDIX "B"

Letter

COPY

The Supreme Court of Pennsylvania

Western District

PATRICK N. BOLSINGER
PROTHONOTARY
HELEN D. STEELE
DEPUTY PROTHONOTARY

August 17, 1970

Edwin L. R. McKean, Esq.
23 West Tenth Street
Erie, Pa. 16501

Re: Redevelopment Authority v. Owners
No. 36 March Term, 1970

Dear Mr. McKean:

This is to advise you that the Court has entered the following Order on the petition for reargument in the above-captioned matter:

"August 13, 1970

Denied.

BY THE COURT"

Very truly yours,

Helen D. Steele

DEPUTY PROTHONOTARY

HS:ad
cc: John M. Quinn, Esq.